

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

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U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION  
2011 SEP 26 PM 4:42

SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

Catherine Merski,

Plaintiff,

v.

No.

NCO Financial Systems, Inc. a  
Pennsylvania corporation,

Defendant.

**1:11-cv-1309 TWP-TAB**

Jury Demanded

**COMPLAINT**

Plaintiff, Catherine Merski, brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), for a finding that Defendant's debt collection actions violate the FDCPA, and to recover damages for Defendant's violation of the FDCPA, and alleges:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction pursuant to § 1692k(d) of the FDCPA, and 28 U.S.C. § 1331.

2. Venue is proper in this District because: a) the acts and transactions occurred here; b) Plaintiff resides here; and, c) Defendant resides and transacts business here.

**PARTIES**

3. Plaintiff, Catherine Merski ("Merski"), is a citizen of the State of Indiana, residing in the Southern District of Indiana, from whom Defendant attempted to collect a delinquent consumer debt allegedly owed for electric service.

4. Defendant, NCO Financial Systems, Inc. ("NCO"), is a Pennsylvania

corporation that acts as a debt collector, as defined by § 1692a of the FDCPA, because it regularly uses the mails and/or the telephone to collect, or attempt to collect, delinquent consumer debts. From its offices in Indiana, and 31 other states, as well as 11 foreign countries, Defendant NCO operates a nationwide debt collection business and attempts to collect debts from consumers in every state, including many thousands of consumers in the State of Indiana. In fact, NCO was acting as a debt collector as to the delinquent consumer debt it attempted to collect from Plaintiff.

5. Defendant NCO is authorized to conduct business in Indiana, has an office in Mishawaka, and maintains a registered agent here, see, records from the Indiana Secretary of State, attached as Group Exhibit A. In fact, NCO conducts business in Indiana.

6. Moreover, Defendant NCO is licensed as a collection agency in Indiana, see, Group Exhibit A. In fact, NCO acts as a debt collection agency in Indiana.

#### FACTUAL ALLEGATIONS

7. On August 2, 2011, Ms. Merski filed a Chapter 7 bankruptcy petition in a matter styled In re: Merski, S.D. Ind. Bankr. No. 11-09787-JKC-7. Among the debts listed on Schedule E of Ms. Merski's bankruptcy petition was a debt she allegedly owed for electric service and Defendant NCO was listed on the bankruptcy petition regarding this debt. See, excerpt of bankruptcy petition attached as Exhibit B.

8. On August 6, 2011, NCO was sent, via U.S. Mail, notice of the bankruptcy by the court, see, the Certificate of Service to the Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors and Deadlines, which is attached as Exhibit C.

9. Nonetheless, NCO called Ms. Merski on her cell phone on August 29,

2011 and August 30, 2011, in an attempt to collect the debt she owed prior to her bankruptcy.

10. All of Defendant NCO's collection actions at issue in this matter occurred within one year of the date of this Complaint.

11. Defendant's collection communications are to be interpreted under the "unsophisticated consumer" standard. See, Gammon v. GC Services, Ltd. Partnership, 27 F.3d 1254, 1257 (7th Cir. 1994).

**COUNT I**  
**Violation Of § 1692e Of The FDCPA --**  
**Demanding Payment Of A Debt That Is Not Owed**

12. Plaintiff adopts and realleges ¶¶ 1-11.

13. Section 1692e of the FDCPA prohibits a debt collector from using any false and/or any deceptive or misleading representation or means in connection with the collection of a debt, including, but not limited to, the false representation of the character, amount or legal status of any debt, see 15 U.S.C. § 1692e(2)(A).

14. Demanding payment of a debt that is no longer owed, due to a bankruptcy, is false and/or deceptive or misleading, in violation of § 1692e of the FDCPA. Randolph v. IMBS, Inc., 368 F3d 726, 728-730 (7th Cir. 2004).

15. Defendant's violations of § 1692e of the FDCPA render it liable for actual and statutory damages, costs, and reasonable attorneys' fees. See, 15 U.S.C. § 1692k.

**COUNT II**  
**Violation Of § 1692c(a)(2) Of The FDCPA --**  
**Communicating With A Consumer Represented By Counsel**

16. Plaintiff adopts and realleges ¶¶ 1-11.

17. Section 1692c(a)(2) prohibits a debt collector from communicating with a

consumer if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address.

18. Defendant NCO was given direct, written notice, through Plaintiff's bankruptcy, that Plaintiff was represented by an attorney in connection with the debt at issue. By directly calling Ms. Merski, despite notice that she was represented by bankruptcy counsel in connection with this debt, Defendant violated § 1692c(a)(2) of the FDCPA.

19. Defendant's violations of § 1692c(a)(2) of the FDCPA render it liable for actual and statutory damages, costs, and reasonable attorneys' fees. See, 15 U.S.C. § 1692k.

#### **PRAYER FOR RELIEF**

Plaintiff, Catherine Merski, prays that this Court:

1. Find that Defendant's debt collection actions violated the FDCPA;
2. Enter judgment in favor of Plaintiff Merski, and against Defendant, for actual and statutory damages, costs, and reasonable attorneys' fees as provided by §1692k(a) of the FDCPA; and,
3. Grant such further relief as deemed just.

#### **JURY DEMAND**

Plaintiff, Catherine Merski, demands trial by jury.

Catherine Merski,

By: 

One of Plaintiff's Attorneys

Dated: September 26, 2011

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